

**ATTACHMENT AGREEMENT  
BETWEEN  
SUMTER ELECTRIC COOPERATIVE, INC.  
AND  
CITY OF LEESBURG, FLORIDA**

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**ATTACHMENT AGREEMENT  
BETWEEN  
SUMTER ELECTRIC COOPERATIVE, INC.  
AND  
CITY OF LEESBURG, FLORIDA**

THIS AGREEMENT ("Agreement"), made and entered into this 1st day of January, 2009, by and between Sumter Electric Cooperative, Inc. ("SECO"), a rural electric cooperative organized and existing under the laws of the State of Florida, and City of Leesburg, Florida, a Florida municipal corporation.

WHEREAS, Licensee desires to place Attachments on certain poles owned by SECO for the limited purpose of providing Services to Licensee's customers in compliance with any and all local, state or federal regulations; and

WHEREAS, SECO is willing to permit, to the extent provided herein, the placement of Attachments on specified poles where the Attachments will not materially interfere with SECO's service requirements, including compliance with published industry safety standards;

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto for themselves and for their successors and assigns do hereby mutually covenant and agree as follows:

**1. DEFINITIONS**

The following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the meaning otherwise set forth in the agreement.

- 1.1 Application for Permit. The Application for Permit Form attached hereto as Exhibits A and B along with other items required by Section 5.1 herein. SECO reserves the right to amend the Application for Permit Form from time to time.
- 1.2 Attached Pole. A pole owned or maintained by SECO that contains at least one Attachment by Licensee.
- 1.3 Attachment. Each affixation of Licensee's cables, strands, wires and associated apparatus to SECO's Distribution Poles which constitutes Licensee's messenger system. An Attachment shall include all facilities located within the vertical space between the point of attachment with a through bolt and the point located 12 inches below the through bolt.
- 1.4 Authorization. SECO's grant of authority to Licensee, evidenced by issuance of a Permit, to affix Attachments to SECO's Distribution Poles in accordance with the terms of this Agreement. An Authorized Attachment is an Attachment for which such an Authorization is effective.
- 1.5 Business Day. All days except Saturday, Sunday and officially recognized Federal legal holidays.
- 1.6 Control. With respect to any entity, the possession, directly or indirectly, of: (a) 50% or more of its ownership interests; or (b) the power to direct or cause the direction of

- management and policy, whether through the ownership of voting securities, partnership interests, by contract or otherwise.
- 1.7 Default. When either Party: (i) fails to perform any of its covenants or obligations set forth in this Agreement, (ii) makes any material representation or warranty in this Agreement or any Application, including any representation made by Licensee's Engineer, that is untrue or incorrect, (iii) files a bankruptcy petition in any bankruptcy court proceeding, or (iv) admits in writing its inability to pay its debts when due or its intention not to comply with any requirement of this Agreement.
- 1.8 Distribution Pole. A pole bearing electric distribution lines and having a voltage rating of or below 34.5 kV. Distribution Poles include secondary poles, drop/uplift poles, area light poles, and guy poles. Guy poles not bearing electric distribution lines also are Distribution Poles for the purposes of this Agreement.
- 1.9 Drop Attachment. An Attachment of a drop cable to a drop/uplift pole or guy pole for the purpose of providing Services to an individual customer of Licensee, in the proximity of a Distribution Pole to which an Authorized Attachment is affixed.
- 1.10 Intermediate Pole. A pole, not used by SECO, which is set or to be set within the proximity of SECO's facilities.
- 1.11 Make Ready Estimate. The estimate, described by Section 5.3, of the cost of the Make Ready Work.
- 1.12 Make Ready Work. All work necessary to prepare SECO's Distribution Poles for Licensee's Attachments, including, without limitation, the costs of materials and equipment, labor, engineering, supervision, overhead, installation or change of Distribution Poles, installation and/or removal of guys, anchors, stub poles, temporary construction, and all other construction.
- 1.13 Overlashing. The practice whereby a service provider physically ties or otherwise attaches new wiring to wiring that already has been previously permitted and affixed to a Distribution Pole.
- 1.14 Pole Attachment Rental Fee. The annual amount per Attached Pole that Licensee must pay to SECO pursuant to this Agreement in order to affix Attachments to SECO's Distribution Poles.
- 1.15 Quarterly Report. That report required by Section 4.9 by Licensee and submitted to SECO on a calendar year quarterly basis.
- 1.16 Security Instrument. An irrevocable letter of credit in favor of SECO, or an equivalent (*e.g.*, a performance bond) to be furnished by Licensee in form acceptable to SECO to guarantee Licensee's payment in full of all Pole Attachment Rental Fees and other amounts payable to SECO under this Agreement. SECO may, in its sole discretion, require a letter of credit or equivalent in a lesser amount.
- 1.17 SECO Practices. SECO's rules and practices for Attachments as set forth in Exhibit C attached hereto.
- 1.18 Services. Cable television, voice, Internet, data transmission or other similar services or combination of services which Licensee is authorized to provide to customers .
- 1.19 Term. The period specified in Section 2 during which this Agreement remains in effect.
- 1.20 Unauthorized Attachment. Any affixation of any Licensee facility of any nature to any property of SECO, including Distribution Poles, without Authorization. Unauthorized Attachments may include facilities affixed to SECO's poles prior to the

Effective Date of this Agreement, provided, however, authorized and permitted Attachments made to SECO's poles under a previous agreement between the parties shall not be considered an Unauthorized Attachment except as provided herein.

- 1.21 Unauthorized Attachment Fee. The fee to be paid by Licensee for each Unauthorized Attachment. The amount of the Unauthorized Attachment fee shall be equal to Pole Attachment Rental Fee in effect at the time that SECO notifies Licensee of the Unauthorized Attachment, and shall be in addition to the Pole Attachment Rental Fee.

## **2. TERM OF AGREEMENT**

The effective date of this agreement shall be January 1, 2009 ("Effective Date"). This Agreement and all Authorizations issued under this Agreement shall terminate on December 31, 2018, except as otherwise provided herein.

## **3. SECO OBLIGATIONS**

- 3.1 Quiet Enjoyment. Subject to the terms and conditions of this Agreement, and throughout the Term of this Agreement, SECO shall not intentionally disturb Licensee's Authorized Attachments, except as otherwise provided herein.
- 3.2 Diligence and Good Faith. SECO shall comply with all federal, state and local rules, regulations and ordinances and all technical rules and specifications applicable to Licensee's affixation of Attachments to SECO's Distribution Poles as authorized herein. Consistent with this requirement and the other terms and conditions of this Agreement, SECO shall in good faith diligently pursue all reasonable measures to accommodate Licensee's authorized Attachments.
- 3.3 Access to Distribution Poles; Easements. Each Party shall be responsible for obtaining its own rights-of-way and easements. SECO'S RIGHTS-OF-WAY OR EASEMENTS DO NOT ENTITLE LICENSEE TO ACCESS THE PROPERTY UNDERLYING SECO'S DISTRIBUTION POLES. SECO shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on SECO's Distribution Poles because Licensee failed to obtain appropriate rights-of-way or easements. SECO may require Licensee to demonstrate that it has secured its own rights-of-way or easements prior to authorizing any Attachments. Consistent with the terms and conditions of this Agreement, SECO shall permit Licensee access to SECO's Distribution Poles. THIS AGREEMENT DOES NOT PERMIT ACCESS OR AFFIXING OF ATTACHMENTS TO TRANSMISSION POLES OR OTHER PROPERTY OF SECO, EXCEPT WHERE AUTHORIZATION FOR ATTACHMENT TO SUCH POLES WAS GRANTED BY A PRIOR AGREEMENT. NO NEW AUTHORIZATION SHALL BE GRANTED WHICH ALLOWS ATTACHMENTS TO BE AFFIXED TO ANY POLE WHICH IS NOT A DISTRIBUTION POLE.

## **4. LICENSEE OBLIGATIONS**

- 4.1 Use of Attachments. Licensee shall use the Attachments solely to provide Services.
- 4.2 Compliance with Applicable Rules. Licensee shall comply with all federal, state, and local rules, regulations and ordinances and all technical rules and specifications applicable to Licensee's affixation of Attachments to SECO's Distribution Poles as authorized herein.

#### 4.3 Technical Requirements and Specifications

- (a) At its own expense, Licensee shall erect, install, and maintain its Attachments in safe condition and good repair in accordance with all applicable technical requirements and specifications, including, but not limited to:
  - (i) Requirements and specifications of the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the Occupational Safety and Health Act (“OSHA”) and Rural Utilities Service (“RUS”), and to the extent such requirements or specifications may conflict, then the most stringent of the NESC, NEC, OSHA or RUS requirements and specifications.
  - (ii) Any amendments or revisions of, or successor(s) to, the requirements and specifications of the NESC, NEC, OSHA, and RUS;
  - (iii) The SECO Practices set forth in Exhibit C; and
  - (iv) Any current or future rules or orders of any federal, state or local authority having jurisdiction.
- (b) Licensee shall bring into conformity as soon as practical following notice by SECO, and no later than any reasonable date set by SECO, any Attachments of Licensee that do not conform to the technical requirements and specifications listed in this section.
- (c) The SECO Practices may be amended from time to time by SECO as necessary in its sole discretion to promote the safe and efficient operation of its electric distribution system, including the Distribution Poles, without resort to the provisions of Section 17 (Modifications), and Licensee agrees to be bound by any such amendment. In the event that SECO amends the SECO Practices set forth in Exhibit C, Licensee shall make all required modifications within sixty (60) days after receipt of notice thereof from SECO, or prior to a commercially reasonable date as determined by SECO at SECO’s sole discretion.

4.4 Intermediate Poles. Licensee shall not set any poles, including any intermediate poles, unless it notifies SECO of its intent to set such pole and complies with the NESC and other federal, state and local codes in the location and installation of such pole.

4.5 Assumption of Risk. Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, agents, contractors or subcontractors. Licensee assumes all risks related to the construction, operation and maintenance of its Attachments, except as to those that may be caused by the gross negligence or willful misconduct of SECO.

4.6 Safety Precautions. Licensee shall take all legally required steps necessary to protect persons and property against injury or damage that may result from the presence, installation, use, maintenance or operation of Licensee’s Attachments, and to avoid interference to SECO’s safe and efficient operation of its electric distribution system. Should any such injury, damage or interference occur despite such steps, Licensee shall promptly notify SECO of such injury, damage or interference. At SECO’s option, Licensee shall promptly either (i) repair such damage and/or resolve such interference, or (ii) compensate SECO for the cost of repairing any such damage and/or resolving such interference, and shall indemnify SECO with respect to such injury as provided in Section 12.

- 4.7 Qualifications of Employees, Agents and Contractors. Licensee shall ensure that all employees, agents and contractors of Licensee used to install or maintain the Attachments have been appropriately certified and trained to perform the work to which they are assigned.
- 4.8 Identification Markers.
- (a) SECO may require, upon written notice at any time during the term of this Agreement, that Licensee place and maintain, at Licensee's expense, permanent identification markers on each of its Attachments prior to affixing it to SECO's Distribution Poles. If so required, identification markers must be located on the cable or other Attachment near each point of attachment with an Attached Pole, and must:
- (i) be non-metallic;
  - (ii) be of a distinctive and uniform design and color; and
  - (iii) be legible, clearly visible and recognizable from the ground by a person having normal vision.
- 4.9 Quarterly Attachment Report. Licensee will provide SECO with a Quarterly Attachment Report. The Quarterly Attachment Report shall be in the format required by SECO and shall contain the total number of Attachments, and the total number of any new or removed Attachments (Exhibit E). New or removed Attachments are those added or removed since the previous Quarterly Attachment Report or, if there has been no prior Quarterly Attachment Report, since the effective date of the Agreement. The accuracy of the report must be verified by the Licensee. The Quarterly Attachment Report shall be accurate as of the date that it is submitted, and shall be provided by Licensee to SECO on or before the first day of March, June, September, and December in each year.
- 4.10 Notification of Attachments. Licensee shall notify SECO on an ongoing basis of the total number of any new Attachments by Permit (Exhibits A and B) and/or Quarterly Report (as provided by article 5.7 and in the form of Exhibit E).
- 4.11 Damage to SECO's Facilities. If Licensee becomes aware of damage to Attached poles or any other property belonging to SECO resulting from Licensee's efforts to install, maintain, alter, or remove its attachments, or any other action of Licensee, Licensee shall immediately notify SECO. If SECO becomes aware of such damage by Licensee's notice or otherwise, SECO may cure the damage at Licensee's expense.
- 4.12 Licensee's equipment, which is located in the right-of-way or easement area in which SECO's poles are also located shall be erected and maintained by the Licensee in such a manner as to make such equipment plainly visible, if such equipment is located above-ground. If such equipment is not plainly visible, SECO shall not be responsible for any damages, direct or consequential, that may occur due to SECO's maintenance of its pole line, right-of-way, or easement.

## **5. ESTABLISHING ATTACHMENT TO POLES; REMOVAL OF ATTACHMENTS**

- 5.1 Application for Permit. Before Licensee may affix any Attachments to or make use of any of SECO's Distribution Poles under this Agreement, Licensee shall submit an Application for Permit to SECO. It shall include the following:
- (a) A completed Application for Permit Form, attached as Exhibits A and B.
  - (b) Detailed construction plans and drawings prepared by Licensee, for each pole line, together with necessary maps, indicating specifically SECO's Distribution Poles to be

- used jointly, the number and character of the Attachments to be placed on such poles, any rearrangement of the SECO's fixtures and equipment necessary for joint use, any relocations or replacements of existing poles, and any additional poles that may be required.
- 5.2 Decision Regarding Application for Permit. If the Application for Permit is approved by SECO, then SECO shall issue a Permit indicating Authorization for the Attachments described in the Application for Permit. If in the sole judgment of SECO attachment to SECO's Distribution Poles as proposed in the Application under the circumstances is undesirable or impracticable based on the technical requirements and specifications of Section 4.3, or because of other capacity, safety, reliability, engineering, or other concerns, SECO may reject all or part of the Application for Permit or limit the number and character of Attachments on any Distribution pole.
- 5.3 Make Ready Estimate; Make Ready Work.
- (a) If SECO determines, on the basis of the Application for Permit and associated construction plans and drawings, that any pole or poles of SECO are inadequate to support the additional facilities in accordance with the aforesaid specifications, SECO shall, submit to Licensee a Make Ready Estimate for necessary Make Ready Work. Notwithstanding fee calculations, the amount of the Make Ready Estimate shall be based on the actual size of the pole to which an attachment is requested.
  - (b) Licensee may accept the Make Ready Estimate. If licensee elects to attach to a pole or poles for which Make Ready Work is required it shall accept the Make Ready Estimate by submitting the acceptance form attached as Exhibit D.
  - (c) Upon acceptance, SECO shall proceed with the Make Ready Work covered by the Make Ready Estimate. SECO shall undertake commercially reasonable efforts to timely and efficiently schedule and complete construction. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work. Upon construction commencement of all Make Ready Work, SECO shall invoice Licensee the amount indicated on the Make Ready Estimate.
- 5.4 Issuance of Permit. Upon completion of the Make Ready Work and payment by Licensee to SECO in the amount shown on the Make Ready Estimate, SECO shall provide a Permit indicating Authorization to proceed according to the approved Application for Permit and accompanying plans.
- 5.5 Pre-construction meeting. Prior to the commencement of Make Ready Work or before Licensee begins affixing Attachments, a pre-construction meeting with the parties and their contractors, if requested, shall be held if SECO or licensee so requests.
- 5.6 Overlashing.
- (a) Licensee may Overlash its own existing Attachments. Each proposed Overlashing by Licensee shall constitute a separate Attachment subject to the Application process and all other provisions of this Agreement. As the Pole Attachment Rental Fee is billed per Attached Pole, an Overlashing that otherwise complies with the requirements of an Attachment will not incur an additional Pole Attachment Rental Fee.
  - (b) Licensee shall not allow third party Overlashing without SECO's prior approval.
  - (c) Overlashing shall not cause any increase in the Pole Attachment Rental Fee.
- 5.7 Alternative Authorization for Drop Attachments.

- (a) Notwithstanding the requirements set forth in Sections 5.1 through 5.6, Drop Attachments may be affixed by licensee without prior Authorization so long as Licensee notifies SECO in a written Quarterly Report, in the form attached hereto as Exhibit E, on or before the first day of March, June, September, or December, whichever comes first of the total number of any new Attachments and the location, represented by pole number (as assigned to pole by SECO) and street address, of each such new Attachment, provided that if any Drop Attachment is affixed during a quarter when an audit is scheduled, Licensee shall provide a supplemental written report on the first day of the audit with the same information current through that day. Any Drop Attachment encountered during an audit which has not been described in a written report shall be deemed an Unauthorized Attachment.
  - (b) Upon notice which complies with this section, the Drop Attachment will be deemed an Authorized Attachment, and such Authorization shall relate back to the date on which the Drop Attachment was affixed. If such timely notice is not given by Licensee to SECO following the affixation of a Drop Attachment, it shall be an Unauthorized Attachment.
  - (c) If in the sole judgment of SECO any Drop Attachment under the circumstances is undesirable or impracticable based on the technical requirements and specifications of Section 4.3, or because of other capacity, safety, reliability, engineering, or other concerns, SECO may refuse to provide Authorization or revoke Authorization.
  - (d) If, upon timely notice from Licensee, SECO refuses to provide or revokes Authorization for a Drop Attachment affixed pursuant to this section, the unauthorized Drop Attachment shall not be subject to an Unauthorized Attachment Fee if it is removed within thirty (30) days by Licensee upon notice that the Authorization has been refused or revoked.
- 5.8 Removal of Attachments. Licensee may at any time and in its sole discretion remove any of its Attachments from SECO's Distribution Poles, but shall provide notice of such removal to SECO, in a written Quarterly Report, in the form of Exhibit E, on or before the first day of March, June, September, or December, whichever comes first after the removal. Such notice shall fully identify, by pole number and location, the poles from which such Attachments have been removed. Licensee's obligations to make Pole Attachment Rental Fee payments shall continue until (i) SECO receives such notice, or (ii) Licensee actually removes its Attachments, whichever occurs last. No refund of any rental fee will be due on account of such removal unless that removal is triggered by a Default of this Agreement by SECO.

## **6. PAYMENT PROVISIONS**

- 6.1 Pole Attachment Rental Fee. SECO shall invoice Licensee for one half of the annual Pole Attachment Rental Fee semiannually, in advance, on the first day of February and the first day of July in each year during which this Agreement remains in effect. The Pole Attachment Rental Fee shall be based upon the number of Attached Poles on the first day of June and the first day of December, respectively. The number of Attached Poles shall be determined from the newest Quarterly Attachment Report (if any have been completed) or newest audit (if any has been completed), whichever is the most recent, supplemented by any notices of attachment or removal given pursuant to Section 5.7 and 5.8. The first payment hereunder shall include such



prorated amount as may be due for the use of the poles from the Effective Date hereof.

- 6.2 Amount. The first invoice under this Agreement will reflect the 2009 Pole Attachment Rental Fee. For the sole purpose of calculating the 2009 Pole Attachment Rental Fee, the 2008 Pole Attachment Rental Fee is deemed to be \$17.94, notwithstanding whether Licensee paid a different actual amount for 2008. On January 1, 2009, and on January 1 of each subsequent year during the Term, the Pole Attachment Rental Fee shall be recalculated by adjusting the most recent year's Pole Attachment Rental Fee in accordance with the change in the Consumer Price Index for All Urban Consumers (CPI-U): all items index for the South Region, Size D – Nonmetropolitan, Area ("CPI") published by the U.S. Department of Labor, Bureau of Labor Statistics during the most recent 12-month period for which CPI data has been published (e.g., if the CPI increases 3% during 2008, the 2009 rate will be calculated on January 1, 2009 at  $\$17.94 \times 1.03 = \$18.47$ )."
- 6.3 Payment Period. All amounts payable under this Agreement shall be due within forty-five (45) days of the date of invoice. If any amount payable is not paid within forty-five (45) days of the date of invoice, Licensee shall be deemed in default of this Agreement and interest shall be charged at the rate of 1.5% per month or the maximum amount allowed by law, whichever is less, on the unpaid balance of delinquent bills for each month or part thereof that such balance remains unpaid.
- 6.4 Security. Licensee shall furnish a Security Instrument at Licensee's expense and in the amount as determined from Table on Exhibit F, with terms and conditions and from a financial institution acceptable to SECO, in order to guarantee Licensee's payment in full of all Pole Attachment Rental Fees and other amounts payable to SECO under this Agreement. No Authorization for any Attachments will be granted to Licensee until the Security Instrument required by this section is received by SECO. SECO, in its sole discretion, may reduce or waive the Security Instrument requirement. Any such reduction or waiver shall be reflected in a writing signed by SECO, and may be revoked by SECO at anytime in SECO's sole discretion.

## **7. INSPECTIONS AND VIOLATIONS OF TECHNICAL REQUIREMENTS**

- 7.1 Right to Conduct. To help ensure the safety and reliability of SECO's electric distribution system, SECO reserves the right to conduct inspections of Licensee's Attachments from time to time as necessary in SECO's sole judgment to determine whether Licensee's Attachments meet the technical requirements and specifications listed in Section 4.3. SECO shall provide ten (10) Business Days notice of such inspections to Licensee, and Licensee shall have the right to be present at and observe any such inspections. Such inspections may be conducted no more frequently than once every year, unless SECO determines that more frequent inspections are necessary for reasons involving safety of persons or protection of property. Licensee shall reimburse SECO for all reasonable costs and expenses of conducting inspections to the extent such expenses are attributable to Licensee's Attachments.
- 7.2 Violations of Technical Requirements. If during inspection or otherwise SECO determines that any of Licensee's Attachments do not conform to the technical requirements and specifications listed in Section 4.3, Licensee shall, upon written notice by SECO, correct such nonconformance within a commercially reasonable

time; provided, however, if in SECO's sole discretion an emergency situation exists such that there is a risk of hazard to people, property, or the operation of SECO's system, notice of such condition need not be in writing and the correction must be immediate.. Should Licensee fail to take all steps necessary to comply with this requirement, or if safety considerations so require, SECO may elect to do such work itself, and Licensee shall reimburse SECO for all costs incurred by SECO. SECO shall not be liable for any loss or damage to Licensee's facilities which may result, and Licensee shall be responsible for any additional actual damages resulting from its failure to act in a timely manner in accordance with these requirements.

## **8. AUDITS**

- 8.1 Right to Conduct Audits. SECO may conduct an audit of Licensee's Attachments, at SECO's expense, to verify the number of Licensee's Attachments. SECO must provide at least thirty (30) days notice of any such audit so that Licensee may be present and observe such audit. In the event the audit shows 3% or greater deviation between Authorized Attachments and Actual Attachments, Licensee shall reimburse SECO for all costs and expenses of conducting audits, including, but not limited to, the cost of providing one SECO employee for the entire time necessary for the audit and mileage (based on the rate published by the IRS) for any vehicles used to conduct the audit. Licensee shall provide, at Licensee's expense, a knowledgeable representative to assist with the audit throughout its duration. Notwithstanding the foregoing, if Licensee fails to timely submit any Quarterly Attachment Report, SECO may, at its option conduct an Audit as described herein at Licensee's expense.
- 8.2 Pre-Audit Meeting. A pre-audit meeting shall be held between a representative of SECO and a representative of Licensee if either party so requests.

## **9. UNAUTHORIZED ATTACHMENTS**

- 9.1 Unauthorized Attachment Fee. Licensee shall pay to SECO an Unauthorized Attachment Fee within forty-five (45) days of notification of each Unauthorized Attachment. The Unauthorized Attachment Fee shall be in addition to any and all other applicable fees, including without limitation, Pole Attachment Rental Fees due and payable for the current year and all prior years in which the Unauthorized Attachment existed. It shall be conclusively presumed that any Unauthorized Attachment discovered during an Audit has been present and affixed since the first day after the last day of the previous audit, or if there has been no audit, since the effective date of this Agreement. Nothing herein shall act to limit any other remedies, including a remedy for trespass, that may be available to SECO as a result of any Unauthorized Attachment.
- 9.2 SECO may require that any Unauthorized Attachment be removed by Licensee within forty-five (45), or SECO itself may remove and store or dispose of the Unauthorized Attachment without liability, at Licensee's expense. Licensee shall reimburse SECO for all costs of such removal, storage, and disposal, and SECO shall not be liable for any loss or damage to Licensee's facilities which may result. Licensee shall be responsible for any additional damages resulting from its failure to remove its Attachments. If SECO removes such Unauthorized Attachments, then SECO may keep the removed Attachments as security for the amount due the owner.

- 9.3 SECO Failure to Act. No act or failure to act by SECO with regard to any Unauthorized Attachment shall be deemed to ratify, license, or Authorize the Unauthorized Attachment. If an Application for such attachment is subsequently approved, such approval shall not operate retroactively to constitute a waiver by SECO of any of its rights under this Agreement regarding the Unauthorized Attachment, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception with regard to any such Unauthorized Attachment.

**10. REPLACEMENT AND RELOCATION OF POLES; ABANDONMENT OR REMOVAL OF ATTACHED POLES; COMPLIANCE WITH GOVERNMENT DIRECTIVES**

- 10.1 Replacement or Relocation of Poles. Whenever SECO intends to replace or relocate an Attached Pole, SECO shall provide notice to Licensee, specifying the poles involved and the time of such proposed replacement, relocation or removal. Licensee may, within thirty (30) days or other time specified in such notice, whichever is longer, transfer its Attachments to the new or relocated Attached Pole. Should Licensee fail to transfer its Attachments within thirty (30) days or other time specified for such transfer, and SECO has not granted Licensee additional time in writing, SECO may elect to transfer Licensee's Attachments, and Licensee shall reimburse SECO for all reasonable costs of such transfer, and SECO shall not be liable for any loss or damage to Licensee's facilities which may result. Licensee shall be responsible for any additional damages resulting from its failure to transfer its Attachments. If SECO has removed its attachments and Licensee's Attachment(s) remain on the original pole after the specified period for relocation has expired, the Authorization covering Licensee's Attachments to the poles shall immediately terminate and such Attachments will therefore be Unauthorized Attachments subject to Section 9.
- 10.2 Vacating Pole Space. In the event it becomes necessary for SECO to use the space on an Attached Pole, Licensee shall, upon receipt of sixty (60) days notice, or such other time period to which the parties have agreed in writing, either (a) vacate the space by removing its Attachments at its own expense, or (b) if SECO decides to replace the pole with a larger pole that can accommodate Licensee's Attachments, pay the charge assessed by SECO for such replacement and transfer its Attachments to the new pole.
- 10.3 Right to Abandon or Remove; Licensee Obligations. Upon sixty (60) days notice to Licensee, SECO may in its sole discretion abandon or remove any Attached Pole. Within this 60-day period, Licensee shall remove its Attachments. At the expiration of the 60-day period, or the expiration of any additional time period granted by SECO in writing, the Authorization covering Licensee's Attachments to the poles shall immediately terminate, and such Attachments will therefore be Unauthorized Attachments subject to Section 9.
- 10.4 Governmental Requirement to Remove. In the event that the use of any Distribution Pole is or becomes lawfully forbidden by federal, state, county or municipal authorities or by owners of private property, SECO shall provide sixty (60) days notice to Licensee that the Authorization covering the use of such pole will be terminated, and that the attachment(s) of Licensee must be removed from the affected

- pole at Licensee's expense. Notwithstanding the foregoing, if the federal, state, county or municipal authority or private landowner requires discontinuance of the pole in less than sixty (60) days, the notice provided by SECO shall be reduced accordingly.
- 10.5 Governmental Requirement to Shorten Pole. If a governmental authority requires SECO to reduce the height of a Distribution Pole such that the continued presence of Licensee's Attachments would not comply with the requirements of this Agreement, then the Authorization covering Licensee's Attachments to the pole shall immediately terminate upon notice from SECO, and Licensee shall remove its Attachments from the affected pole at its own expense by the date specified by SECO.

## **11. REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 11.1 Common Representations. Each Party represents and warrants that: (a) it has full authority to enter into and perform this Agreement; (b) this Agreement does not conflict with any other document or agreement to which it is a party or is bound, and this Agreement is fully enforceable in accordance with its terms; (c) it is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed; (d) the execution and delivery of this Agreement and performance hereunder will not conflict with or violate or constitute a breach or default under its formation documents and will not violate any law, rule or regulation applicable to it; and (e) no consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver and perform its obligations under this Agreement; (f) the person executing this agreement on behalf of a party has full legal authority to bind the licensee.
- 11.2 Required Authorizations. Licensee represents and warrants that it has obtained all legally required authorizations that Licensee must obtain from federal, state, county or municipal authorities, public or private landowners, or other third parties, to erect, operate, and maintain its Attachments, and to provide the Services, including all required franchises, consents, easements, and certificates of convenience and necessity, and covenants that it will maintain and comply with the such authorizations throughout the Term.
- 11.3 LIMITATIONS ON WARRANTIES. There are no warranties under this agreement except to the extent expressly and unambiguously set forth herein. The parties specifically disclaim and exclude all implied warranties, including the implied warranties of merchantability and fitness for a particular purpose. SECO specifically disclaims any warranty or representation regarding the condition and safety of SECO's Distribution Poles. For all purposes of liabilities, Licensee shall rely on its own expertise to determine whether a Distribution Pole is adequate, after Make Ready Work, if appropriate, for attachment of its facilities.

## **12. INDEMNIFICATION**

- 12.1 Licensee Indemnification. Licensee shall indemnify, protect, save harmless and insure SECO, its officers, directors, employees and members, from and against any and all claims and demands for, or litigation with respect to, service interruptions, damages to property and for injury or death to persons, including payments made under any Worker's Compensation Law or under any plan for employee disability

and death benefits and including all expenses incurred in defending against any such claims or demands, or other damages which may arise out of or be caused by Licensee or its agents, employees, contractors or subcontractors with respect to the erection, operation, maintenance, presence, use, repair, rearrangement or removal of Licensee's Attachments or Unauthorized Attachments or the proximity of Licensee, its agents and employees on or in the vicinity of SECO's Distribution Poles, including, without limitation, consequential, incidental, punitive, exemplary or indirect damages suffered by licensee or by any subscriber, customer or purchaser of licensee for lost profits or other business interruption damages.

- 12.2 SECO Indemnification. SECO shall indemnify, protect, save harmless and insure Licensee from and against any and all claims and demands for, or litigation with respect to, damages to property, and for injury or death to persons, including payments made under any Worker's Compensation Law or under any plan for employee disability and death benefits and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by any gross negligence or willful misconduct of SECO or its agents or employees.
- 12.3 Notice. In the event of any claim, demand or litigation specified in this section, the Party to be indemnified (the "Indemnified Party") shall give prompt notice to the other Party (the "Indemnifying Party") of such claim, demand or litigation. The Indemnifying Party shall have sole control of the defense of any action or litigation on such a claim or demand (including the selection of appropriate counsel) and all negotiations for the settlement or compromise of the same, except that the Indemnifying Party may not make any non-monetary settlement or compromise without the Indemnified Party's consent, which consent shall not be unreasonably withheld. The Indemnified Party shall cooperate with the Indemnifying Party in the defense and/or settlement of any claim, demand or litigation. Nothing herein shall be deemed to prevent the Indemnified Party from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnified Party's own counsel at the Indemnified Party's own expense.

### **13. INSURANCE**

- 13.1 Insurance Requirement. Licensee shall carry insurance in such form and amount and issued by such companies as are reasonably satisfactory to SECO to protect the Parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of any loss, injury, death or damage involving any Attachment or Attached Pole. Throughout the Term of this Agreement, Licensee shall secure and maintain, and shall ensure that its agents, contractors and subcontractors secure and maintain, insurance that, at a minimum, conforms with the RUS insurance requirements of 7 CFR § 1788.11, as it may be amended, which currently requires:
- (a) Workers' compensation and employer's liability insurance, as required by law in the state of Florida, covering all employees who perform any of Licensee's obligations under this Agreement. If workers' compensation or employer's liability insurance ceases to be required by law in the state of Florida, then insurance shall be obtained

- by Licensee that is equivalent to what would be applicable if workers' compensation and employer's liability laws were in effect.
- (b) Public liability insurance covering all of Licensee's operations under the Agreement with limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
  - (c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, non-owned, or hired, with limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may also be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
- 13.2 Certificate of Insurance. Within thirty (30) days of the Execution Date, Licensee shall furnish to SECO a certificate evidencing compliance with the above insurance requirements. This certificate shall list SECO as additional insured and shall note specific cancellation language, as follows: "In the event of cancellation or material change of said policies, the insuring company shall give the Party to whom this certificate is issued thirty (30) days prior notice of such cancellation or material change." If Licensee fails to renew adequate insurance, SECO may terminate this Agreement pursuant to Section 14 (Defaults).
- 13.3 Responsibility for Contractors. Licensee shall bear full responsibility for ensuring that its agents, contractors and subcontractors are in full compliance with the requirements of this section before they perform any work for Licensee in connection with this Agreement.
- 13.4 No Limitation on Indemnities. The purchase of the insurance required by this section shall not relieve Licensee of its liability or obligations under this Agreement or otherwise limit Licensee's liability under Sections 12.1 and 12.3.

#### **14. DEFAULTS**

- 14.1 Licensee Default. If Licensee is in Default under this Agreement and fails to correct such Default within the cure period specified below, SECO may, at its option, and without further notice:
- (a) declare this Agreement to be terminated in its entirety;
  - (b) terminate the Authorization covering the Distribution Pole(s) with respect to which such Default shall have occurred;
  - (c) decline to authorize additional Attachments under this Agreement until such Defaults are cured;
  - (d) suspend Licensee's access to, or work on, any or all of SECO's Distribution Poles;
  - (e) correct such Default and charge Licensee as provided in this Agreement; and/or
  - (f) seek specific performance of the terms of this Agreement through a court of competent jurisdiction.
- 14.2 Licensee Cure Period. For a period of thirty (30) days following receipt of notice from SECO, Licensee shall be entitled to take all steps necessary to cure any

Defaults. The 30-day notice and cure period does not apply to any Default by Licensee of its payment obligations under this Agreement.

- 14.3 Termination Because of Licensee Default. If SECO terminates this Agreement because of Licensee's Default, Licensee shall not be entitled to any refund of any Pole Attachment Rental Fee
- 14.4 Reimbursement for SECO Work. If Licensee fails to cure a Default with respect to the performance of any work that Licensee is obligated to perform under this Agreement, SECO may elect to perform such work, and Licensee shall reimburse SECO for all actual costs related thereto.
- 14.5 SECO Default. If SECO is in Default under this Agreement, SECO shall have thirty (30) days following notice from Licensee within which to correct such Default. If SECO does not cure its Default within the allotted time period, Licensee may, at its sole discretion, either terminate this Agreement or seek specific performance of the terms of this Agreement through a court of competent jurisdiction. If Licensee elects to terminate the Agreement, SECO shall within thirty (30) days refund to Licensee on a pro rata basis any Pole Attachment Rental Fee paid for the current annual rental period.
- 14.6 Attorney Fees and Court Costs. In the event of a breach by either party of any of the terms of this Agreement, the non-prevailing party agrees to pay to the prevailing party's attorney's fees and court costs for all proceedings, trials, and appeals incurred by the prevailing party in connection with the enforcement of the agreements and covenants of this Agreement, the collection of payments hereunder, or any action for damages for breach of this Agreement.

## **15. TERMINATION OF AGREEMENT**

Unless the parties agree otherwise in writing, upon termination or expiration of this Agreement, Licensee shall remove all of its Attachments from all of SECO's Distribution poles within ninety (90) days or other such period as may be agreed by the parties in writing. If any Attachments are not so removed within ninety (90) days (or at the end of such other period agreed by the parties in writing) following such termination or expiration, SECO shall have the right to remove such Attachments, and to use, dispose of or sell same, at Licensee's sole expense and without any liability to Licensee. Notwithstanding any other provision of this Agreement to the contrary, if there is a change of Control of Licensee, then SECO shall have the right, in its reasonable discretion, immediately to terminate this Agreement in its entirety without further liability. A Pole Attachment Rental Fee shall be due for the period following the termination or expiration of this Agreement during which Attachments remain affixed. All portions of this agreement reasonably necessary to enforce and collect the Pole Attachment Rental fee following the termination or expiration of this agreement shall survive such termination or expiration until such time as the Pole Attachment Rental Fee has been collected.

## **16. WAIVER OF TERMS OR CONDITIONS**

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall be and remain at all times in full force and effect.

## **17. MODIFICATIONS**

Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented at any time only upon written agreement by the Parties hereto. Notwithstanding the foregoing, all Exhibit forms may be modified by SECO upon thirty (30) days notice to Licensee. The names, addresses, facsimile numbers and electronic mail addresses to which notices must be sent may be modified by either Party upon written notice to the other.

## **18. PAYMENT OF TAXES**

Each Party shall pay all taxes and assessments lawfully levied on its own property and services located on the Distribution Poles subject to this Agreement. The taxes and assessments which are levied on such poles themselves shall be paid by SECO, but any tax, fee or charge levied on SECO's poles related to their use by Licensee shall, to such extent, be paid by Licensee with the exception of income taxes, if any, related to income derived by SECO as a result of Licensee's Attachments.

## **19. NOTICES**

Any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other shall be in writing and shall be delivered via personal delivery, Federal Express (or other equivalent, generally recognized overnight delivery service), facsimile or electronic mail transmission, or certified U.S. mail return receipt requested. Notice given by facsimile shall be deemed to have been received when transmitted, provided that the sender shall have received a transmission report indicating that all pages of the notice have been transmitted with the correct facsimile number. Notice given by electronic mail shall be deemed given when directed to an electronic mail address at which the recipient has consented to receive such notice. Notice given by personal delivery, overnight delivery, or certified U.S. mail shall be effective upon receipt.

## **20. FORCE MAJEURE**

Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; or (c) strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this section and its effect on performance required under this Agreement.

## **21. CONSTRUCTION OF AGREEMENT**

21.1 This Agreement was reached by each Party after arms' length negotiations and upon the opportunity for advice of counsel, and shall not in any way be construed against either Party on the basis of having drafted all or any part of this document.



21.2 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and venue for any action based on this Agreement shall lie in the court of appropriate jurisdiction located in Lake County, Florida.

**22. OWNERSHIP RIGHTS**

All Attached Poles under this Agreement shall remain the property of SECO, and Licensee's rights in SECO's Distribution Poles shall be and remain a mere license for as long as authorized under the terms and conditions of this Agreement. Nothing herein shall be construed to compel SECO to maintain any of its poles for a longer period than is required by SECO's own service requirements.

**23. THIRD PARTY BENEFICIARIES**

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the Parties and may be enforced solely by the Parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, except as provided herein.

**24. SEVERABILITY**

Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail. In such event, however, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.

**25. PRIOR AGREEMENTS SUPERCEDED**

This Agreement embodies the entire agreement between SECO and Licensee with respect to the subject matter of this Agreement, and supersedes and replaces any and all previous agreements entered into by and between SECO and Licensee, written or unwritten, with respect to that subject matter.

**26. ASSIGNMENT AND TRANSFER**

Subject to SECO's approval, Licensee may assign its rights and obligations under this Agreement by submitting an application to assign in the form attached hereto as Exhibit "G". Such Assignment will be in accordance with and subject to the terms of the application and approval by SECO. SECO reserves the right to amend Exhibit "G".

**27. FACSIMILE AND ELECTRONIC SIGNATURES; COUNTERPARTS**

This Agreement may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

**28. SURVIVAL; LIMITATION ON ACTIONS**

Notwithstanding the termination of this Agreement for any reason, Sections **12, 16, 19, and 21 through 26, inclusive** shall survive termination for the term of the applicable statute of limitations. Notwithstanding any provisions to the contrary, all rights, remedies, or

obligations which arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully enforceable for the applicable statute of limitations.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed and their respective corporate seals affixed thereto, by their respective representatives thereunto duly authorized, on the day, month, and year first above written.

Signed and sealed in the presence of:

SUMTER ELECTRIC COOPERATIVE, INC.

\_\_\_\_\_  
Witness signature

By:

\_\_\_\_\_  
As its:

\_\_\_\_\_  
Witness printed name

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness printed name

CITY OF LEESBURG, FLORIDA

\_\_\_\_\_  
Witness signature

By:

\_\_\_\_\_  
As its: Mayor

\_\_\_\_\_  
Witness printed name

\_\_\_\_\_  
John H. Christian  
Printed name

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness printed name